

Natural Rights and the Declaration of Independence

As you are probably aware, the [Declaration of Independence](#) is one of American's key founding documents, along with the [Articles of Confederation](#), the [Northwest Ordinance](#) and the [Constitution](#). It has attained iconic status over the course of American history, and deservedly so. But that status has made it difficult for people to pull it off its pedestal and take the argument within it seriously. This is a pity since it contains a very clear concise explanation of the founder's understanding of the purposes of government and a justification for declaring independence from Britain. A careful examination of the document is necessary for a full understanding of the basis of American government.

In brief it argues that men are endowed with [natural rights](#), these are insecure unless people are willing to establish a government to secure them, people have the right (even duty) to change a system of government that is no longer securing their natural rights, and that the government of Great Britain is no longer protecting their natural rights so the colonists have a right to declare their independence from it. That argument sounds simple enough, but it took centuries to develop. In this section we attempt to understand this concept more fully by outlining the institutional and philosophical development of the concept of natural – or unalienable -- rights which are then articulated in the Declaration of Independence. More precisely, we will understand how the institutional and philosophical bases of absolute rule by the monarch came to be replaced with the idea that each individual possesses natural, or unalienable, rights and governments are established to secure them.

The goal is to fully understand the argument presented in the Declaration of Independence (and the Texas Declaration of Independence as well, since it is similar in spirit to the national document), and what the document did and did not do. We will take a historical approach in order to understand the development of these concepts.

Some key points about the document before we begin might be helpful to this endeavor. The document argues that rights are innate (granted by a creator) in the individual, not granted by a government. It states that government are established to secure the rights of individuals. And that the just powers of government are based on the consent of the governed. It argues that the King of

England was attempting to establish a tyranny over the colonies by usurping colonial legislative, executive and judicial powers and it provides examples of usurpations. It concludes by establishing that the colonies were to be considered independent states, but it is unclear about whether they are a single nation or a collection of sovereign entities.

It is important to note that the Declaration of Independence is not a constitution. It creates no institutions, nor does it establish anything like a government. The authors of the document would do so separately by creating a confederacy under the Articles of Confederation. We will cover that document in the next section. A key question then will be to determine what type of constitutional system would best secure the unalienable rights. As we will see, some argued that a confederacy was best, while others argued for a more centralized system. That is a future issue however.

For now we turn ourselves to the history that led to the evolution of the argument in the Declaration of Independence.

History

The argument contained in the Declaration of Independence is the product several centuries of history. Some of this history is institutional, meaning that it concerns the development Anglo -American history of legislative, executive, and judicial institutions, and just as important, their interrelationships. It might be appropriate to define the term "[institution](#)." It simply refers to the structure that is sometimes established to make what had otherwise been informal behaviors formal. Think of the difference between a pickup game of football where the kids playing it make the rules on the fly for a particular game, as opposed to an official games of football complete with referees that work out of an officially sanctioned playbook. The same thing occurs with governing institutions. Early efforts at establishing policy may be loose and informal, but over the course of time, solid institutions with rules begin to evolve. American government is full of these types of institutions. Examples include Congress and the Supreme Court.

In the history that follows we will note a gradual shift from concentrated control of government by a monarch (and executive) to balanced governmental power that includes legislative and judicial institutions as well as the executive. Some of

this history is philosophical. By “philosophical history” I refer to the development of theoretical justifications for the idea that individuals have natural rights and are not subject to placement within a class system.

1 - Institutional History

[Anglo-American](#) institutional history has witnessed a shift from concentrated power under the authority of an executive to a system of checks and balances where a strong legislative and judicial branch can limit the executive. What had been unrestrained monarchic power became defined executive power within a system which contains equally powerful legislative and judicial institutions. The difference is that once legislative and judicial institutions have been developed and they have attained a degree of power, executive power can be checked. The actual power of the monarch would be limited by an increasingly powerful Parliament and an independent court system. As we will note (and we hit this point more thoroughly in GOVT 2302 when we discuss institutions more comprehensively) these would influence the eventual development of Congress and the Supreme Court.

It is crucial to note that this was a major accomplishment that took several centuries and some bloody civil wars to accomplish. It is an organic history that walks us through the piecemeal, step by step development of these institutions from the ground up. As we will note when we discuss the U.S. Constitution, this history was taken into account when the framers of the document meet in the Constitutional Convention.

This story takes us back to Great Britain and the period of history stretching roughly from the Magna Carta (1215) to the English Bill of Rights (1689). It takes us from arbitrary rule by a monarch to the existence of three broad governing institutions working within the constraints imposed by constitutional system. The point to take from this is that we cannot fully understand the theory underlying government in the U.S. nor the design of the U.S. Constitution without understanding the history that preceded it, specifically the development of these separate institutions.

There are a variety of events that are central to this story, but here are links to a small sample to get an idea of when these turning points occurred:

- [Charter of Liberties](#) (1100)
- [Magna Carta](#) (1215)
- [Petition of Right](#) (1628)
- [The Trial and Execution of Charles the First](#) (1641)
- [The Glorious Revolution](#) (1688)
- [The English \(or British\) Bill of Rights](#) (1689)

We will begin our overview with a look at a document offered over 100 years prior to Magna Carta. The [Charter of Liberties](#) was a written proclamation written by Henry I in 1100 which stipulated limitations on his powers, specifically those over the clergy and the nobility. The proclamation was offered largely due to his weakness, many were opposed to his rule. This agreement was in many ways an appeasement to the forces that could potentially cause him trouble. The text of the charter can be [read here](#). By and large the document stated that Henry would abide by law and custom in various ways, and would not arbitrarily interfere with decisions of barons - such as marriage and dowries. It is an early example of how a constitution (though this really isn't a constitution in the sense we understand them) imposes a rule of law which structures the actions of governing officials. Later this semester we will discuss the concept of a procedural liberty (like the requirement that police have probable cause before they search people) as a contemporary example of this sort of thing.

Note that this agreement is written down. There is something people can point to as proof that this liberty exists. Prior to the Charter of Liberties power tended to be concentrated in the hands of a monarch who ruled by fiat. Britain was under a feudal system. Society was hierarchical. Everyone knew their place. Absolute rulers could tax as they choose and force people to fight whatever wars they chose to become involved in. Much of this was done according to vague customs, which led to ongoing conflict between the monarchy and the nobility. As we know, absolute rule is costly and some, wiser rulers chose to compromise rather than fight. This is what Henry wanted to be seen as doing, but the reality is that there was no enforcement mechanism for ensuring that his proclamation was abided by. It was a voluntary limit to his power over the nobility and the church, and as such it was a limit that could be easily ignored, which he soon did. Note also that the proclamation was in essence a piece of legislation, one authored and passed into effect by the monarch. The monarch at this point possess the power

to make laws. No separate institution existed at this point to do so. And since the monarch had sole power of enforcement, there was no entity in a position to compel the king to follow his own proclamation. But eventually a situation would arise where a later king would be compelled to respect limits on his power.

Some historians argue that Henry not only ignored his own charter, but sought to hunt down the copies of it that were made and distributed. Apparently all but one was found. The missing document was possessed by the church and was housed in Canterbury. In the early 1200s, when conflicts with King John were causing the nobility (the barons) to join together to seek redress, the copy was produced by the archbishop at the time, [Stephen Langton](#). He is alleged to have shown the document to a collection of barons and reminded them - or let them know for the first time - that certain “ancient rights and liberties” had been agreed to by previous monarchs, and were owed to them as well. King John had quickly demonstrated himself to be a capricious, arbitrary, and abusive king. The barons had been subjected to arbitrary taxes and to compulsory military service (participation in the Crusades for example), as well as general belittlements. These actions had the effect of giving common cause to the otherwise contentious barons and allowed them to briefly put their disagreements aside and form an assembly to limit the king's power. This is what the [Magna Carta](#) attempted to do (read the [text](#) here).

As opposed to the Charter of Liberties, which was granted (albeit ignored) voluntarily by Henry, the Magna Carta was forced upon King John by the temporarily concentrated power of the nobility. Key features of the document included the following:

- *The monarch could not rule arbitrarily, since the monarch was subject to the law.*
- *The monarch must respect certain rights on the part of freemen.*
- *Habeas Corpus (the requirement to produce a person held without cause) – and the idea of due process in general – was established.*
- *Taxes and military actions had to be approved by an assembly.*
- *This established the foundation for a governing system based on the rule of law.*

Many of these components will end up being included in the Constitution including Habeas Corpus, jury trials, and the general idea of due process. Most importantly - in an institutional sense - was the Security Clause (clause 61)

“ . . . we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter . . . ”

This allowed a small collection of noblemen to meet and oversee the actions of the king and to respond to abuses and any violation of the agreement. This is very similar to the what we now call oversight, which is the ability of members of the legislature - generally members of congressional committees - to compel testimony from executive officials pertaining to the performance of their jobs. From this small assembly grew what would become a Parliament sufficiently powerful to execute a sitting monarch in the 1640s for abusing the powers of his office and leading England into Civil War. This process is detailed more thoroughly in 2302 (the section on the definition and historical background of the legislature).

The immediate effect of the Magna Carta was limited however. Just prior to the baron's revolt, King John had placed England under the protection of the Church in order to prevent an invasion by France - France couldn't get away with essentially attacking the pope. This meant though that the agreement restricting the power of the monarch could legally be assumed to apply to the pope as well. Undermining the divine authority of the king could also undermine the authority of the church. As a consequence:

“Pope Innocent III annulled the 'shameful and demeaning agreement, forced upon the King by violence and fear.' He rejected any call for restraints on the King, saying it impaired John's dignity. He saw it as an affront to the Church's authority over the King and the 'papal territories' of England and Ireland, and he released John from his oath to obey it.”

Never the less, the nobility were still allowed to meet in assembly. This assembly

would gradually evolve into the House of Lords which within two centuries would be matched with a House of Commons. Collectively they would be called Parliament and gradually, as its powers grew, it would impose limits on the power of the monarch. This was a slow process however, because monarch were building effective administrative structures that would allow them to rule, in essence, absolutely. Monarchs had the power to call parliaments into session and to disband them when they choose, but since Parliaments had power over the collection of revenue, monarchs had to call them from time to time. Parliaments got into the habit of presenting grievances to the monarch which had to be redressed prior to the consideration of revenue requests.

These grievances would increase tension between the two institutions, so struggles between the Monarch and Parliament grew. These struggles would peak during the reign of the [Stuart Monarchs](#), especially the four that ruled between 1603 and 1689, who claimed to rule under absolutely, with divine authority and with few legitimate limitations on their authority.

Here are links for further information about the key figures and episodes of this period:

- [James 1st](#)
- [Charles 1st](#)
- [The Commonwealth](#) – [Oliver Cromwell](#)
- [Charles 2nd](#)
- [James 2nd](#)

In brief, the Stuart Monarchs were problematic because the

- 1 - Claimed Divine Right to rule
- 2 - Worked around Parliament in order to achieve their objectives
- 3 - Refused to admit they were subject to the law, saw themselves as the embodiment of the law.

Opposition to the rule of the Stuarts was led by Parliament. and one of the factors driving their opposition was a renewed appreciation for the ancient rights and liberties established in Magna Carta, which had been effectively neglected for centuries. A major event during this period was the presentation to Charles I of the [Petition of Right](#) which was a document written by a major legal figure -

Edward Coke - passed by the British Parliament in 1628, to effectively remind the monarch what limits on the power of the monarchy had already been agreed to. Charles I, of course, had no intention of recognizing limits on his power. Note the 400 year gap between Magna Carta and the Petition of Right. This indicates that while Parliament had grown in size and as an institution, it had yet to effectively limit the arbitrary power of the monarch. This would soon change. In response to the submission of the petition of right, Charles the First suspended parliament for 11 years. This period has been called the [Eleven Year's Tyranny](#), where Charles' rule was unchallenged. This led to the accusation that Charles was a tyrant and therefore unfit to rule over Britain.

The conflict was also complicated by religious factors. The British Parliament was dominated by Protestants, and slowly by the more radically Protestant sect we know as the Puritans. The Stuarts were sympathetic towards Catholicism. This mattered because Protestants sects tended to be congregational, meaning that authority rested with the members of the church while Catholicism had a hierarchical organization with authority resting with the pope on top with little or no discretionary authority with the church's members. Collectively, these factors led opponents of the Stuarts to conclude that they were conspiring to create an absolute monarchy in Britain similar to what existed in France. They were right to make that assumption.

Ultimately the Parliament and the supporters of Charles I would form their own armies and a series of civil wars would break out between supporters of the monarchy and supporters of parliament. After one of these wars Charles I was captured, placed on trial for treason and abuse of power, and executed in 1649. Perhaps it might simply be gratuitous to dwell on this point, but notice that Parliament finally had the physical strength to impose limitations - a brutal one at that - on the monarch. But what followed was just as important as the limitation on monarchic power. For slightly over a decade England was governed solely by Parliament - often under the protectorate of Oliver Cromwell - and without a monarch. This proved to be just as chaotic and repressive an era as that under the any of the Stuarts. Many consider it to be a military dictatorship. The monarchy was ultimately restored partly to limit the power of Parliament. The point being that tyranny can be exercised by any institution, and that freedom is best established by ensuring that a balance of power existed between institutions.

The [Execution](#) of [Charles 1st](#)

This balance would be codified in England after the [Glorious Revolution](#) (1688), when the last of the Scottish Stuarts was driven from the crown and Parliament offered it then to William and Mary with the understanding that they had to sign the [English Bill of Rights](#) (1689) first. This is perhaps the most crucial transition made in English government. It went from being an absolute monarchy to a constitutional monarchy. The monarch could no longer claim to rule by prerogative, based on divine right. The English Bill of Rights was a constitution of sorts. It defined the relationship between the legislative, judicial and executive institutions, and spelled out certain rights of the people. Many features of the English Bill of Rights would be included in the U.S. Constitution. Here are a few items from the document. In each, William and Mary are made to state that they agree with these statements:

- *That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;*
- *That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;*
- *That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;*
- *That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;*
- *That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;*
- *That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;*
- *That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;*

Collectively these create the institutional arrangement that we would come to know as the separated powers enforced with a system of checks and balances. They also establish what we now call the rule of law. As opposed to the result of

the Magna Carta, this arrangement stuck. Parliament had the power to keep the monarchy in its proper place. The consequence of this cannot be overestimated. As we will see in the Declaration of Independence, a key complaint the colonist had was that King George III was attempting to establish a tyranny over the colonies. The word tyranny here has a precise meaning. It refers to the three powers of government - the legislative, executive, and judicial - being held in the hands of a single person or institution. The arbitrary capricious exercise of governmental power is facilitated by this arrangement.

Defining limits on the powers of governing institutions - denying their arbitrary use - had an important consequence. Personal liberty began to develop in Britain. Prior to the signing of the document, when no limits could be placed on governing institutions, it was relatively easy for authorities to punish subjects for criticizing them. This was true whether the monarchy was in place, or Parliament ruled during the Commonwealth. They each punished sedition, that is, any attempt to bring government into contempt. There was as a consequence little we would consider to be free speech, or a free press, or assembly rights or the right of people to petition for a redress of grievances. These are all protected in the First Amendment of the United States Constitution.

So prior to 1689, one criticized the monarch at his or her peril. Brutal and public punishments were dealt out to those who dared in order to discourage others from engaging in the same activity. Obviously this limits the ability of the philosophically minded to actively inquire about the appropriate basis of governing power. To do so was risky. That's why it is more than just a coincidence that the same year that the English Bill of Rights was signed, a small pamphlet was published anonymously that would challenge not just a single monarch, but the very foundation of the monarchy itself, and suggest instead that governments can only be justified on the consent of the governed. We will now turn to that story, but prior to doing so it is essential to reiterate that this idea could only be made public once the containment of arbitrary power made it possible.

2 - Philosophical History

Again, by "philosophical history" I refer to the development of theoretical justifications for the idea that individuals have natural rights and are not subject to placement within a class system. This replaced the doctrine of [divine right of](#)

[the king](#) which was used to justify, on religious and philosophical grounds, the position of the monarch as sovereign and absolute ruler over their territory. This marks a shift similar what we covered in the previous section on institutional history, and they go hand in hand. The shift from absolute rule by a monarch to a constitutional system with separated powers and a rule of law that applies to everyone mirrors the shift from a government based on the divine right of the monarch to one based on the concept of natural rights. It might be worth pondering whether these two are essentially the same, but the specific point I'll make here is that once absolute rule was contained, and the English Bill of Rights was signed, it was possible to argue, safely and publicly, that individuals possess natural rights. As we know, the argument became especially popular in the British colonies in North America, and would be summarized in the opening paragraphs of the Declaration of Independence.

In case you've forgotten it, here it is:

We hold these truths to be [self-evident](#), that [all men are created equal](#), that they are endowed by their [Creator](#) with certain [unalienable Rights](#),^[74] that among these are [Life, Liberty and the pursuit of Happiness](#). That to secure these rights, Governments are instituted among Men, deriving their just powers from the [consent of the governed](#), That whenever any Form of Government becomes destructive of these ends, it is the [Right of the People to alter or to abolish it](#), and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Notice that this is a logical - almost mathematical - argument. A series of statements build on each other to lead to the conclusion that the colonists were justified in breaking their political connection with England. Commentators often like to argue that this approach was indicative of the Enlightenment and its desire to find laws that govern natural and political behavior. The declaration accordingly should be considered to be part of this tradition. Of course logical arguments were presented to justify divine right as well; this argument had to be shot down prior to its replacement. We'll turn to this process.

Ancient rulers, as is generally known, claimed to be divine. The Pharaohs claimed to be living gods, and some of the nuttier Roman Emperors thought the same. If

not living gods, monarchs often claimed to be heads of official state churches. This was one of the factors leading to an increase in the power of the British Monarch during the era of Henry VIII. We're familiar with his many wives, and perhaps also familiar with the struggle he had with the Church of Rome which was not receptive to his requests for annulments. We may not fully appreciate his solution however, which was to establish the Church of England with him as its head.

Though this episode was part of the Protestant Reformation - at least broadly - it was not a doctrinal revolt. No new theological concerns drove the separation. Henry just wanted to get remarried and didn't want an external force that could place limits on his ability to do so. By placing himself at the head of the official state religion, he could justify - on religious grounds - anything he chose to do. Notice that this helps concentrate monarchic power. It adds an important nuance to the nature of monarchic rule in Britain prior to this period. While parliament could not limit the king, the church could. Once the king claims to be the head of the church, that force disappears and the opportunity for absolute rule expands. This set the stage for the Stuart Monarchs and their argument that their authority was based on divine right.

- For perhaps the greatest explanation of the basis of divine right, [watch this video](#).

The first of these monarchs [James I](#), is noted for having commissioned the most popular translation of the Bible yet produced: [The King James Bible](#). The purpose behind the translation was to ensure that Biblical language supported the king's understanding of monarchic power. It was meant to replace other versions, notably the [Geneva Bible](#), with translations that were critical of monarchic power. James was also philosophically minded and produced his own [reflections on divine right](#). Here is a sample:

Kings are justly called gods, for that they exercise a manner or resemblance of divine power upon earth: for if you will consider the attributes to God, you shall see how they agree in the person of a king. God hath power to create or destroy make or unmake at his pleasure, to give life or send death, to judge all and to be judged nor accountable to none; to raise low things and to make high things low at his pleasure, and to God are both souls and body due. And the like power have

kings: they make and unmake their subjects, they have power of raising and casting down, of life and of death, judges over all their subjects and in all causes and yet accountable to none but God only. . . .

I conclude then this point touching the power of kings with this axiom of divinity, That as to dispute what God may do is blasphemy....so is it sedition in subjects to dispute what a king may do in the height of his power.

Aside from James I, [Robert Filmer](#) detailed an argument for divine right in [Patriarcha](#). His work (1680) spurred a backlash that would result in various rebuttals, most importantly [John Locke's First Treatise on Government](#). Filmer's work was based on his understanding the Biblical history and how that history conditions the proper distribution of political power. In his view, the Bible established a social order that was to be maintained by a governing authority. He also argued that government should be thought of as a family. Just as Adam was given complete control over his family and descendants, the king should have complete control over the people. This is because the King is a descendant of Adam who was given dominion over all the world, therefore this dominion is also granted to Kings. This control was absolute, and the king had the power to make life and death decisions over the people.

Locke takes the argument apart partly by claiming that he misinterprets biblical passages. He argues that Filmer misinterprets of the Fifth Commandment. While Filmer argues it grants absolute power to the father, Locke points out that it actually states simply that children must honor the father *and* the mother. It's not simply patriarchal, but rather demonstrates that children must be guided by each parent while they are children. Locke argues that this suggests that children are subject to the control of their parents while they grow, but that this control ceases once the children mature and are able to make their own rational decisions. He also challenges the idea that Adam was granted absolute dominion over others, and that this remains the basis for absolute rule since the current monarchs can trace lineage to Adam. He rejects the idea that a simple direct lineage can be traced from Adam to the British Monarchy, and also that biblical text states that Adam is granted dominion over the beasts of the field, not over other people. Dominion can be exercised over non-rational creatures, not rational beings.

Locke's argument introduces a central point behind his entire enterprise. It is the idea that people are rational. The extent of the monarch's appropriate power

ends at that point where rationality begins. Parents only have control over children until they can control themselves. A government can only exercise control over non-rational entities, not rational ones. This fits within the general framework of the enlightenment, and of the idea of natural rights and natural law. Locke did not develop the concept. Both [The Stoics](#) and [Thomas Aquinas](#) among others believed that the universe is governed by reasonable, rational laws, and that humans have the capacity to reason, which means they can understand these laws.

John Locke adds to this theory by applying man's capacity to reason to the question of how governments evolved. After arguing against divine right in the First Treatise, he proceeds to build up a justification for the existence of government in the Second Treatise on Government. He begins this exercise by engaging in a thought experiment, he asks what was "the hypothetical condition of humanity before the [state](#)'s foundation?" This is the same as asking what is [the State of Nature](#)? What were we like prior to the development of governing institutions? This is a fiction in many ways. David Hume argued as much, but did acknowledge that it helps us develop theories about what type of government can be justified philosophically, despite the reality of what types of systems have in fact developed.

In essence this is a question about human nature. What, at root, are we all about? Are we naturally good or bad or what? This is an important question because the answer will condition the nature of the governing system that will be ultimately justified. Being rational creatures, people will eventually agree to what is reasonable. They will enter into some sort of contract that will allow them, collectively, to compensate for whatever they lack individually. This is called [Social Contract Theory](#), and is already radically different than the divine right of kings. In the latter, governing authority was delegated to the king by God, in the former it was delegated to by an agreement of the people. Government is a contract. People agree to form a government in order to secure rights otherwise insecure in the state of nature. It is rational for people to develop a mechanism for securing their rights – their life liberty and property.

Before continuing, it's important to add some supplemental information here. Over a century before the events described here occurred, [Niccolo Machiavelli](#) published [The Prince](#), which is held by some political scientists to mark the birth

of the discipline, or at least the empirically based version of the discipline. The book was purportedly written to the Medicis - a ruling family in Florence - to advise them on how best to exercise political power. It did so based not on idealistic assumptions about how people ought to behave, but on realistic assessments about how people do behave. If one is to properly exercise power, it is better to base one's actions on reality, not fantasy. This empirical approach influenced later writers like Hobbes and Locke who similarly based their theories on the realities they witnessed around them. None of these was more important than taking a cold hard look at human nature.

While evidence of such theories can be found elsewhere, [Thomas Hobbes](#) (1588 – 1679) was a strong proponent of social contract theory. In addition he had a profoundly negative opinion of human nature, and a dismal view of what the state of nature was like. He speculated that it was a state of perpetual war of all against all. He would admit that his viewpoint may have been influenced by the civil wars raging during his lifetime, and also by the fact that his mother went into labor with him when the Spanish Armada was threatening to invade England. People had to leave the state of nature in order to escape perpetual violence. Otherwise life would be “solitary, poor, nasty, brutish, and short.” He argued this in [The Leviathan](#) (read the [text](#) here). It was an early example of social contract theory. Only a strong central government control the violence inevitable in the state of nature. Therefore government, once established, involved a permanent loss of individual autonomy, but this was done in order to provide for individual security, so it was a reasonable tradeoff. And as long as this governing institution was based on consent, it was sound.

[John Locke](#) (1632 - 1704) also based his theory about the proper basis of government on a social contract, but he did not consider the state of nature to be constantly violent. He did think that rights were insecure in the state of nature, and that people would be subject to the theft of property among other things. He argued that in the state of nature, people have possession of (a right to) their lives and are free to engage in labor. By mixing labor with raw materials, one adds value to an object, which is property. Notice that these rights are innate in the individual, and they apply to everyone equally. In a system based on divine right, the king grants the rights of individuals. Not so in the state of nature. They innate within the individual - or as Jefferson would state in the declaration - endowed by their creator.

By virtue of the fact that people are entitled to the property they create, they can be said to legitimately possess it, but possession of it is not secure. The owners of the property may be unable to keep it from being taken from them. This holds true for one's life and liberty. So the question becomes, how is crime dealt with in the state of nature? The most rational way to do so is to allow for the formation of groups to provide mutual security. It makes sense for people to give up a little freedom (in the form of property (taxes) and willingness to fight) in order to secure greater freedoms. Crime and external security can only be effectively dealt with by a cooperative effort funded and implemented by the community. This begins the slow process of creating something that looks like a government, with the ability to compel people to pay taxes and to follow laws established by the community.

Locke also argued that governing institutions create neutral environments that can reconcile disputes fairly. Without such a neutral body, disputes between individuals have to be settled between the them, and neither has any incentive to seek justice. They will simply be driven to ensure that the dispute will be reconciled in a manner which benefits them. But this is self interest, not justice. So Locke concludes that a neutral governing institution (a court system) is necessary in order to establish a system of justice. Beyond Locke, it's also argued that governing entities are required in order to provide "public goods," which are goods that no private producer has an incentive to provide because there is no immediate benefit in doing so.

So, in brief, as applied to government, The theory of natural rights suggests that individuals posses certain natural (unalienable) rights that can only be limited for the purpose of security or to pursue the common good. But this creates a philosophical problem: If we all have natural (unalienable) rights, what gives anyone authority over the others? What justifies the imposition of one's individual liberty? The answer is consent. The concept of the consent of the governed is tied into the concept of the natural rights of the individual. The former is required by the latter. People can be compelled to follow laws and to pay taxes because they consent to the formation of the governing system.

The topic of consent can be very problematic of course. Do we require consent from every single individual affected by government or simply a majority? If it is

up to the majority, how can we ensure that they will not use their power to negate the rights of the minority? Must consent be given directly by the people, or can it be given through their representatives? Is consent handed down from generation to generation? No one alive consented to the ratification of the current Constitution, so how can we really argue that it rests on the consent of the governed? One way to address this last question is to remind ourselves that people are argued to enter into a social contract because it is the rational - or reasonable - thing to do (a huge assumption of course that we can discuss at some other point). As we work our way through the founding documents and the law in general, we will point out again and again how much the word "reason" is used to define the proper parameters of governmental authority. I'll give one example as illustration.

When we discuss the 4th Amendment we will note that it states that people are to be secure from "unreasonable" searches and seizures. It does not clearly state what makes a search unreasonable - apart from stating that the search must be based on probable cause. But again, there is no clear definition of what the term "probable" means. These must be debated and argued in order to arrive at an understanding of the terms. Debate and argument are - at least one hopes - exercises in reason. That being the case, a reasonable conclusion can be held to be one that a rational person would consent to. That being the case, the actions of government can be said to properly rest on the consent of the governed, if not, mechanisms such as elections exist for people to demonstrate their opposition. We will pour through these mechanisms in later sections, but for now it is simply worth pointing out that this shift driven by Locke not only provided a new theoretical foundation for governmental power, but provided a framework for the colonists to justify to the world their decision to break political ties with Britain. In a word, they would attempt to prove that what they were doing was reasonable.

First, we should place the [Declaration of Independence](#) in context.

As early as the reign of Queen Elizabeth, English explorers investigated settlement opportunities along the Atlantic Coast of what is now the US. She granted permission to [Sir Walter Raleigh](#) to explore the coast and determine whether settlements might prove profitable. Initially they were not. Eventually, during the reign of James I, the [Virginia Company](#) (actually two versions one for Virginia and

one for Plymouth) would be chartered to authorize and fund settlement of the Atlantic coast. It is worth noting that England was late to the game. Spain and Portugal had already settle lands, and being the first to go, were able to acquire the richest lands - the Caribbean, Mexico and South America. The latter two were especially profitable because they were full of gold and silver.

Virginia and Plymouth had no natural resources to speak of. Eventually tobacco would become profitable, but little else. This would become an advantage however because since there was little wealth to protect, there was little need to send over the troops necessary to protect it. English troops would regardless be soon enough preoccupied with civil war. The result was that until the end of the [French and Indian Wars](#) in 1763 there was little official presence of the British in its North American Colonies. This meant that for 150 years, the colonies were effectively able to rule themselves, and as a result self rule became prized. It was a virtue that the colonists would fight to retain. The end of the war marks a transition for at least two reasons. The first, it resolved who in fact possessed the area from the Appalachian Mountains to the Mississippi River. Once the British acquired it, it sent over British officials to control it. The sudden appearance of British officers was a shock to the colonists. Second, since the result of the war primarily benefitted the colonists by protecting them from attack from the west by French forces and their native allies, it was argued that they should then be responsible for paying for it. To add a further factor, since the creation of the constitutional monarchy in 1689, the internal conflict which had preoccupied Britain was over and they were able to focus more fully on external matter, such as control over their colonies.

As we know, this requirement that colonists pay for the costs of the war through taxes was not matched by a similar opportunity for the colonies to represent themselves in the British Parliament, so the colonies were unable to have any control over the forces (taxes and British officials) over them. The colonists were considered to be unequal to the British. They were therefore denied the "ancient rights and liberties" that Parliament itself had fought for ([The Rights of Englishmen](#)). Just as conflict between Parliament and the monarchy was inevitable following the rejection of the Petition of Right, conflict was inevitable here as well.

Beginning in 1765 following the passage of the Stamp Act. a series of meetings

were held to allow the colonies to discuss, agree upon and implement responses to the actions of the British. the most consequential of these was the Second Continental Congress where the decision to break with Britain was made. The colonists were divided over the whether it was wise to break with Britain. We will explore these divisions later this semester. But this decision to declare independence had to be justified, which was the purpose of the Declaration of Independence. In it the colonists - now Americans - make a rational appeal to a "candid world" that what they are doing is in fact justified. They didn't have far to look for an argument. Locke's writings, as well as those of many British authors, were well known to the colonists. They were voracious readers of political philosophy. A committee was assembled with the Congress to draft a document and the committee selected Thomas Jefferson to write the first draft, and while his draft was changed considerably, his basic argument was maintained by the other members of the Congress.

[Here is a link to the text](#)

His argument builds from two basic points covered above. First, that concentrated power is tyrannical power and that any attempt to consolidate control over legislative, executive and judicial power is by definition tyrannical. Second, that people possess rights that are not granted by a king, but endowed by a creator and that governments must secure those rights and all power must ultimately be consented to. So we may consider this document to be the natural consequence of the several hundred years of history we outlined above.

For the nitty gritty - we can think of the argument in the Declaration of Independence as having has three parts.

The first restates Locke's argument for natural rights.

We hold these truths to be self-evident. That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and

organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

The second part makes the case that the King of England was attempting to establish a tyranny by consolidating control over colonial legislative, executive and judicial powers. The colonists complaints against King George III were very similar the complaints the British Parliament had against Charles I.

Examples of accusations

Legislative Usurpation: *He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.*

Executive Usurpation: *He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harass our People, and eat out their Substance.*

Judicial Usurpation: *He has made Judges dependent on his Will alone, for the Tenure of their Offices, and Amount and Payment of their Salaries.*

As a consequence, the authors argue that the king has lost legitimacy: *A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.* This is a huge point, because at no point do the colonist state they are in rebellion. They suggest instead that it is the king - with the support of Parliament - that are in rebellion because they are n longer governing according to the natural law.

- [Here is a list of the grievances and the events which led to them](#)

The third part concludes that the king has demonstrated that he is unfit to be the ruler of a free people and the colonies are now free and independent states.

*We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies solemnly publish and declare, That these United Colonies are, and of right ought to be, **FREE AND INDEPENDENT STATES**; that they are absolved from all allegiance to the British crown and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved;*

and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do.

But the terminology is ambiguous. We are not clear whether the term “The United States of America” is a single proper noun or a description of a relationship among sovereign nations. It is argued that this was due to the suspicion many had about the abuses that might occur whenever government power was nationalized, this conflict would become more topical as time progressed and focus turned from the conflict with Britain to the conflict between the states.

One thing is certain. While this document indeed declares and justifies independence, it does not create a constitutional structure to assist in governing the new nation. The members of the Second Continental Congress would also write the Articles of Confederation, a very weak document that reflected fear of centralized national power. But this would not be ratified until 1781. In the meantime the Second Continental Congress would attempt to be that government, though it was largely ineffective. In the next section we begin discussing constitutions, their significance and the nature of American Constitutions. To prepare us all for that discussion I offer this definition for a Constitution:

A set of rules for a government that articulate its powers and functions, and establishes its institutions, principles, structures and procedures. It also establishes its relationship with the general population by clearly stating its limits and the rights of the people.

And links to the following specific constitutions:

[The Articles of Confederation](#)

[The United States Constitution](#)

[The Texas Constitution](#)

Here are links for information about the Texas Declaration of Independence:

- [Texas Declaration of Independence.](#)
- [Texas From Independence to Annexation 1836-1846.](#)